

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

ALISON ROSE CRUZ

Respondent.

Case No. 2012-20

OAH No. 2011081017

ORDER DENYING RECONSIDERATION

The effective date of the decision in the above-entitled matter having heretofore been stayed through July 8, 2012, for the purpose of determining whether Complainant's request for reconsideration of said decision should be granted; since no action was taken by the Board within the time allowed for ordering reconsideration, the petition for reconsideration is deemed denied by operation of law pursuant to Government Code section 11521(a). The Board's Decision issued on April 30, 2012, becomes effective on July 9, 2012.

IT IS SO ORDERED this 6<sup>th</sup> day of July 2012.

BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



Erin Niemela  
Temporary Chair

BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

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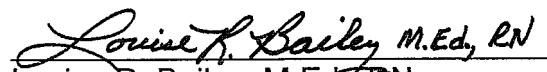
OAH No. 2011081017

**NOTICE OF DECISION AND ORDER**

No action having been taken on the attached Proposed Decision,  
pursuant to Government Code section 11517(c)(2) the attached decision is  
hereby deemed adopted by operation of law on April 30, 2012.

Pursuant to Government Code section 11519, this Decision shall become  
effective on May 30, 2012.

Date: April 30, 2012.

  
Louise R. Bailey, M.Ed., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

ALISON ROSE CRUZ  
20231 Falling Springs Road  
Walnut, CA 91789  
Applicant for Registered Nurse License,

Respondent.

Case No.: 2012-20

OAH No.: 2011081017

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on December 7, 2011.

Randy Mailman, Deputy Attorney General, represented the Complainant.

Respondent appeared in person and represented herself.

Oral and documentary evidence and evidence by way of official notice was received.

The record was held open until December 21, 2011, for receipt of additional documentary evidence from Respondent. Respondent timely filed said documents and the same was marked and received as Exhibit B in evidence as administrative hearsay. The matter was deemed submitted on December 22, 2011.

This matter was consolidated for hearing with Board of Vocational Nursing and Psychiatric Technician Case No. VN-2009-1564, OAH Case No. 2011040730 because of a substantial similarity of factual and legal issues.

The Administrative Law Judge now finds, concludes and orders as follows:

## FACTUAL FINDINGS

### *Parties*

1. Louise R. Bailey, Complainant herein, brought the Statement of Issues in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs (Board).

2. On September 7, 2010, the Board of Registered Nursing, Department of Consumer Affairs received an application for Licensure by Examination from Alison Rose Cruz, Respondent herein. Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application.

### *Procedure*

3. The Board denied Respondent's application on March 28, 2011. Respondent timely appealed and timely requested a hearing. Administrative proceedings before the Department are conducted in conformity with the provisions of the California Administrative Procedure Act, chapter 5, commencing with Government Code section 11500 *et seq.* All pre-hearing jurisdictional requirements have been met by Complainant.

### *Criminal Convictions*

4. On April 9, 2008 at 2:49 a.m., Respondent was driving with expired registration tags on her vehicle. When officers with the Los Angeles Police Department conducted an enforcement stop on Respondent's vehicle, they then observed Respondent displayed objective signs of alcohol impairment. Upon questioning, Respondent admitted to drinking alcohol earlier that night. Respondent submitted to a breath-alcohol test at the police station. The test revealed that at the time of testing, Respondent had a blood alcohol content<sup>1</sup> of 0.13%. Thereafter, she was subjected to criminal proceedings resulting in the conviction set forth in Finding 5.

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<sup>1</sup> Blood Alcohol Content or blood alcohol concentration (abbreviated BAC) is the concentration of alcohol in a person's blood. BAC is most commonly used as a metric of intoxication for legal or medical purposes. It is usually expressed in terms of volume of alcohol per volume of blood in the body.

5. On May 14, 2008, in the criminal matter entitled *People v. Alison Cruz* (Super. Ct. Los Angeles County, 2008 Case No. 8MP05310), Respondent was convicted of one misdemeanor count (DUI 1) of driving with a blood alcohol level of .08% or above, in violation of California Vehicle Code section 23152, subdivision (b). The Court placed Respondent on probation for three years and ordered her to serve thirteen days in jail, perform twelve days of Caltrans, or perform 175 hours of community service, complete an alcohol education course, and pay fines.

6. Within a year and one-half of the DUI conviction, and while on probation for same, on November 6, 2009 at 3:30 a.m., Respondent was driving a vehicle without using headlights. When officers with the Los Angeles Police Department conducted an enforcement stop on Respondent's vehicle, they then noticed that Respondent displayed objective signs of alcohol impairment. Upon questioning, Respondent admitted to drinking earlier that night. Respondent submitted to a breath-alcohol test at the police station. The test revealed that at the time of testing, Respondent had a blood alcohol level of 0.10%. Thereafter, Respondent was subjected to criminal proceedings resulting in the conviction set forth in Finding 7.

7. On May 14, 2010, in the criminal matter entitled *People v. Alison Cruz* (Super. Ct. Los Angeles County, 2009 Case No. 9MP13646), Respondent was convicted of one misdemeanor count (DUI 2) of driving under the influence of alcohol in violation of California Vehicle Code section 23152, subdivision (a). Respondent was placed on probation for a period of five years. She was ordered to serve up to fifteen days in jail, complete a second offender alcohol education course, and pay court fines.

8. The convictions set forth in Findings 5 and 7, when combined, evidence to a substantial degree present or potential unfitness of a registered nurse to perform the functions authorized by her license in a manner consistent with the public health, safety or welfare. Accordingly, both convictions are substantially related<sup>2</sup> to the qualifications, functions or duties of a registered nurse.

#### *Consequent Conduct*

9. By reason of Findings 4 and 6, on April 9, 2008 and November 6, 2009, Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to herself and the public when she operated a vehicle while impaired.

10. By reason of Findings 5 and 7, Respondent was convicted of crimes involving the consumption of alcohol.

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<sup>2</sup> California Code of Regulations, title 16, section 1444.

### *Mitigation*

11. The police reports (Exhibits 8 and 10) record Respondent's body weight at 115 to 120 pounds at the time of arrest. Respondent still youthful at age 26, lacked sufficient sophistication with regard to the potent effects of alcohol on people of light weight.<sup>3</sup>

### *Aggravation*

12. The two times she drank to excess leading to the misdemeanors – April 9, 2008 and November 6, 2009 – are close in time. The impact of the first arrest should have provided the necessary sophistication to avoid any subsequent criminal action as the result of excessive alcohol consumption. Additionally, Respondent's conduct leading to DUI 2 violated the terms and conditions of the probation meted out for DUI 1.

### *Rehabilitation*

13. As a result of the DUI 2 Respondent will remain on probation until May, 2015. She did serve 16 hours of jail time plus credit for other time served. She is presently in full compliance with probation having completed 240 hours of community service cleaning parks for Pomona Public Works. She has completed the SB 1344 18 month DUI Program including the required number of group discussion sessions, individual interviews, alcohol education and self-help meetings. Respondent has suffered no other conviction.

14. Respondent, in debt following her course study in registered nursing at West Coast University, lives with her parents. She is close to both parents and to her two siblings: a brother and a sister. Respondent has stability of family life and fulfills familial obligations.

15. During Respondent's recent work history subsequent to the DUIs – both in health care and otherwise – she has demonstrated the character traits of diligence, trustworthiness, honesty and competence as attested to by the credible written commentary of her supervisors:

- Alipha Gomez, Production Manager U.S. Apparel Group –

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<sup>3</sup> For two persons with similar body compositions and different weights the smaller (lighter) person will achieve a high blood alcohol content (BAC) concentration than the larger (heavier) person if ingesting the same amount of alcohol.

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I was Alison's immediate supervisor for 7 months. Despite her DUI record, we took the risk of hiring her because of her good personality during her interview. We did not regret hiring her because she came out to be an asset to the company. I have always found her to be excellent and efficient employee who always comes to work with a smile on her face and her dedication in completing all of her assignments on a timely manner.

Alison is a pleasure to work with and demonstrates terrific interpersonal skills when dealing directly with colleagues. Though it was unfortunate for us that Alison had to leave the company to continue her studies, I highly recommend Alison Cruz for employment.

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- Lilibeth C. Navarro, RN, Administrator, Access Home Health Care Inc. –

Alison Cruz . . . has been with my company for about 5 months now, working as one of my Clinical Data Entry staff. From the beginning of her hiring process, she was honest with me and disclosed her occurrences with past DUI's. Despite these incidences, I chose to take her into this company because her resume showed full qualification, competency with the home health field and a great attitude. Since hiring her, she has not disappointed my decision in taking her into this company. She is punctual, completes her work in a timely manner, has great communication and interpersonal skills that allows her to have a great relationship with our clinical staff and patients. Alison takes initiative in doing beyond the expected parameters of her job from offering her help with other co-workers to problem solving with a client over the phone. I am very grateful for her contribution to the office and find her a great asset to this company. I am confident that her intelligence, hard work, and dedication will be displayed in her profession as a Nurse. . . .

16. Respondent has completed a course of study in Registered Nursing at West Coast University leading to an Associate Degree in Nursing. A number of classmates submitted credible written commentary as to Respondent's nursing skill including the following:

While at school with Alison I was with her during our clinical portion of our education aside from in the classroom. During clinical we are given the chance to apply what we learn in class and help patients while working with an established nurse. A few days of clinical I was paired with Alison on the same floor. Everything I saw from Alison on those days was very positive. Alison had a compassion for her patients that many students don't display while in school. She was very attentive to the patients she was assigned and wanted to do whatever she could for the people she was working with. Alison was always willing to help a hand to her fellow students as well. When talking with patients Alison was extremely professional, courteous, and aware of the patient's feelings. From start to finish of each clinical day Alison was a hard worker, wanting to learn as much as she could and she didn't know the answer she readily asked other to try and find the answer. Having dealt with nursing education and hiring of new nurses Alison displayed exactly the type of nurse I would have wanted to work with.

17. Respondent is now committed to a life free from alcohol abuse. Toward that end she has, to date, met all court ordered requirements of the alcohol abuse program and she has actively participated in Alcoholics Anonymous (AA) 12-Step meetings. Her AA sponsor Redan M. proffered the following written attestation of December 9, 2011:

I was approached by Alison at one of our meetings and she explained her situation to me. I was happily willing to help her out any way I can, although if possible, I still would like to remain anonymous, providing only my first name and first letter of my last. Alison and I both attend the Covina Club, 510 S. 2<sup>nd</sup> Ave. I've been attending this meeting since February of this year and I have seen Alison on Tuesdays, 5:00p meetings weekly. Alison has voluntarily spoken to the group before about her situation on how alcohol has affected her nursing career and the group members are very welcoming to her. She has mentioned that she has been sober since her last incident of her DUI. Alison and I talk frequently at the meetings because we have very similar situations as far as the run in with the law and the medical field. I am currently on the path to



sobriety and I admire Alison's determination to prove herself. She attends these meetings despite the fact that it is obvious she does not have drinking problem unlike others who admittedly do. Alison is a great listener, very kind, respectable person and is very attentive to other members in the group. I am very confident that Alison will continue her road of sobriety. I pray that everything works out for her in the end and I hope this letter will be taken into consideration...

18. Respondent's DUI 1 did not have sufficient impact (see Finding 12) to compel a change in attitude with regard to the abuse of alcohol. Respondent's DUI 2 did compel a change in attitude. Respondent's credible testimony and contrite demeanor did demonstrate such a change. The change in attitude was caused by a number of factors including the DUI 2 sanctions imposed by the court; Respondent's realization that driving while drunk risks the lives of others and risks the loss of all privileges to practice as a licensed professional.

## LEGAL CONCLUSIONS

### *Violations*

1. Cause exists to discipline Respondent's licenses pursuant to Code sections 2750 and 2761, subdivision (f) and 480, subdivisions (a)(1) and (a)(3), for conviction of a substantially related crime, as set forth in Findings 5 and 7.

2. Cause exists for license discipline pursuant to Code sections 2761, subdivision (a), 2762, subdivision (b), and 480, subdivision (a)(3), by reason of Finding 9.

3. Cause exists for license discipline pursuant to Code sections 2761, subdivision (a), 2762, subdivision (c) and 480, subdivision(a)(3), by reason of Findings 10.

### *Disposition*

4. California Code of Regulations, title 16, section 1444.5 states:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 *et seq.*), the Board shall consider the disciplinary guidelines entitled "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (10/02) which are hereby incorporated

by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.

This is not a disciplinary action but an application proceeding. However, the Guidelines are of use in determining whether or not a license should be granted or denied.

5. California Code of Regulations, title 16, section 1445, subdivision (a) states:

- (a) When considering the denial of a license under section 480 of the Code, the board, in evaluating the rehabilitation of the applicant and her present eligibility for a license will consider the following criteria:
  - (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
  - (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under section 480 of the Code.
  - (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
  - (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
  - (5) Evidence, if any, or rehabilitation submitted by the applicant.

6. Using the same sequential order above:

- (1) Two DUIs in a short span of time is severe conduct placing others at risk of physical harm or death.
- (2) The convictions set forth in Findings 5 and 7

are the only convictions.

- (3) The misdemeanors are recent.
- (4) Respondent is still on probation and is in compliance with probation.
- (5) In the relatively short time since the convictions Respondent has undertaken rehabilitative efforts (Findings 13 through 18).

#### *Licensing Considerations*

7. The objective of a disciplinary proceeding is to protect the public, the licensed profession, maintain integrity, high standards, and preserve public confidence in vocational nurses.<sup>4</sup> The purpose of proceedings of this type is not to punish Respondent. In particular, the statutes relating to registered nurses are designed to protect the public from any potential risk of harm. The law looks with favor upon those who have been properly rehabilitated.

8. With regard to the public interest the Guidelines (see Legal Conclusion 4) were reviewed and considered by the Administrative Law Judge to determine the appropriate Order.

9. The misdemeanors are recent and Respondent is still on probation. However, her rehabilitation to date is sufficient, in the public interest and with regard to the public health and safety, to justify a probationary license with appropriate conditions.

#### ORDER

The application of Respondent Alison Rose Cruz for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed and Respondent placed on probation for a period of three years on the following conditions:

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<sup>4</sup> *Camacho v. Youde* (1975) 95 Cal.App3d, 165; *Clerical v. Department of Motor Vehicles* (1990) 224 Cal.App.3<sup>rd</sup> 1016, 1030-1031; *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4<sup>th</sup> 810, 816.

## **SEVERABILITY CLAUSE**

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

### **1. OBEY ALL LAWS**

Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

### **2. CRIMINAL COURT ORDERS**

If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

### **3. COMPLY WITH THE BOARD'S PROBATION PROGRAM**

Respondent shall fully comply with the conditions of Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

### **4. REPORT IN PERSON**

Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

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## **5. RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE**

Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when she resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the statuses of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing license during the term of probation.

## **6. SUBMIT WRITTEN REPORTS**

Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

## **7. FUNCTION AS A REGISTERED NURSE**

Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

## **8. EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS**

Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his or her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

## **9. SUPERVISION**

Respondent shall obtain prior approval from the Board regarding Respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum – The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

- (b) Moderate – The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.
- (c) Minimum – The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.
- (d) Home Health Care – If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' home visited by Respondent with or without Respondent present.

## **10. EMPLOYMENT LIMITATIONS**

Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

## **11. COMPLETE A NURSING COURSE(S)**

Respondent, at his/her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his or her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

## **12. VIOLATION OF PROBATION**

If a Respondent violates the conditions of his probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

## **13. LICENSE SURRENDER**

During Respondent's term of probation, if he/she ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his or her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One (1) year for a license surrendered for a mental or physical illness.

## **14. PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE**

Respondent, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months



duration. As required, report shall be submitted by the program on forms provide by the Board. If Respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, Respondent within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider Respondent in violation of probation.

Based on Board recommendation, each week Respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholic Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

#### **15. SUMBIT TO TESTS AND SAMPLES**


Respondent, at her expense, shall participate in a random, biological fluid testing, or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The Respondent is responsible for keeping the Board informed of Respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is no available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any conformed positive finding shall be reported immediately to the Board by the program and the Respondent shall be considered in violation of probation.

In addition, Respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If Respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend Respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If Respondent fails to participate in a random, biological fluid testing, or drug screening program within the specified time frame, the Respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend Respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

Dated: January 19, 2012

  
RICHARD J. LOPEZ  
Administrative Law Judge  
Office of Administrative Hearings

RJL:ref

1 KAMALA D. HARRIS  
Attorney General of California  
2 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
3 RANDY M. MAILMAN  
Deputy Attorney General  
4 State Bar No. 246134  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2442  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
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8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues  
11 Against:

12 **ALISON ROSE CRUZ**  
20231 Falling Springs Road  
13 Walnut, CA 91789  
Applicant for Registered Nurse License  
14

15 Respondent.

Case No. 2012-20

**STATEMENT OF ISSUES**

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Statement of Issues solely  
19 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department  
20 of Consumer Affairs.

21 2. On or about September 7, 2010, the Board of Registered Nursing, Department of  
22 Consumer Affairs ("Board") received an application for Licensure by Examination from Alison  
23 Rose Cruz ("Respondent"). Respondent certified under penalty of perjury to the truthfulness of  
24 all statements, answers, and representations in the application. The Board denied Respondent's  
25 application on March 28, 2011.

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1       6.     Section 2762 of the Code states, in pertinent part, that:

2       “[I]t is unprofessional conduct for a person licensed under this chapter to do any of the  
3 following:

4       (b) Use alcoholic beverages to an extent or in a manner dangerous or injurious to herself,  
5 any other person, or the public or to the extent that such use impairs her ability to conduct with  
6 safety to the public the practice authorized by his or her license.

7       (c) Be convicted of a criminal offense involving the consumption of any of the substances  
8 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is  
9 conclusive evidence thereof.”

10      7.     Section 23152 of the Vehicle Code states, in pertinent part, that:

11      “(a) It is unlawful for any person who is under the influence of any alcoholic beverage or  
12 drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle.

13      (b) It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his  
14 or her blood to drive a vehicle.”

15                                   **REGULATORY PROVISIONS**

16      8.     California Code of Regulations, title 16, section 1444, provides:

17      “A conviction or act shall be considered to be substantially related to the qualifications,  
18 functions or duties of a registered nurse if to a substantial degree it evidences the present or  
19 potential unfitness of a registered nurse to practice in a manner consistent with the public health,  
20 safety, or welfare.

21      Such convictions or acts shall include but not be limited to the following:

22      (a) Assaultive or abusive conduct including, but not limited to, those violations listed in  
23 subdivision (d) of Penal Code Section 11160.

24      (b) Failure to comply with any mandatory reporting requirements.

25      (c) Theft, dishonesty, fraud, or deceit.

26      (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the  
27 Penal Code.”

**FIRST CAUSE FOR DENIAL**

**(Conviction of Substantially Related Crimes)**

9. Respondent's application for licensure is subject to denial under Code section 480, subdivision (a)(1), in conjunction with Code sections 480, subdivision (a)(3) and 2761, subdivision (f), as defined by California Code of Regulations title 16, section 1444, in that Respondent was convicted of crimes substantially related to the qualifications, duties, and functions of a licensed Registered Nurse, as follows:

10. On or about May 14, 2008, in the criminal matter entitled *People v. Alison Cruz* (Super. Ct. Los Angeles County, 2008 Case No. 8MP05310), Respondent was convicted of one misdemeanor count of driving with a blood alcohol level of .08% or above, in violation of

California Vehicle Code section 23152(b). The Court placed Respondent on probation for three years and ordered her to serve thirteen days in jail, perform twelve days of Caltrans, or perform 175 hours of community service, complete an alcohol education course, and pay fines. The basis for the conviction is as follows:

(a) On or about April 9, 2008 at 2:49 a.m., Respondent was driving with expired registration tags on her vehicle. When officers with the Los Angeles Police Department conducted an enforcement stop on Respondent's vehicle, they immediately observed Respondent displayed objective signs of alcohol impairment. Upon questioning, Respondent admitted to drinking earlier that night.

(b) Respondent submitted to a breath-alcohol test at the police station. The test revealed that at the time of testing, Respondent had a blood alcohol level of 0.13%.

11. On or about May 14, 2010, in the criminal matter entitled *People v. Alison Cruz* (Super. Ct. Los Angeles County, 2009 Case No. 9 MP13646), Respondent was convicted of one misdemeanor count of driving under the influence of alcohol in violation of California Vehicle Code section 23152(a). Respondent was placed on probation for a period of five years. She was ordered to serve up to fifteen days in jail, complete a second offender alcohol education course, and pay court fines. The basis for the conviction is as follows:

1 (a) On or about November 6, 2009 at 3:30 a.m., Respondent was driving a vehicle  
2 without using headlights. When officers with the Los Angeles Police Department conducted an  
3 enforcement stop on Respondent's vehicle, they immediately noticed that Respondent displayed  
4 objective signs of alcohol impairment. Upon questioning, Respondent admitted to drinking  
5 earlier that night.

6 (b) Respondent submitted to a breath-alcohol test at the police station. The test revealed  
7 that at the time of testing, Respondent had a blood alcohol level of 0.10%.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Committed Act That If Done By Licensee Would Be Grounds for Discipline)**

10 12. Respondent's application for licensure is subject to denial under Code section 480,  
11 subdivision (a)(3), in conjunction with Code section 2762, subdivision (b), in that Respondent  
12 used alcoholic beverages in a manner dangerous to herself and the public when she operated a  
13 vehicle while under the influence of alcohol.

14 13. Complainant refers to and by this reference incorporates the allegations set forth  
15 above in paragraphs 10, subparagraphs (a) and (b), and 11, subparagraphs (a) and (b), inclusive,  
16 as though set forth fully.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Conviction Involving the Consumption of Alcohol)**

19 14. Respondent's application for licensure is subject to denial under Code section 480,  
20 subdivision (a)(3), in conjunction with Code section 2762, subdivision (c), in that Respondent  
21 was convicted of crimes involving the consumption of alcohol.

22 15. Complainant refers to and by this reference incorporates the allegations set forth  
23 above in paragraphs 10, subparagraphs (a) and (b), and 11, subparagraphs (a) and (b), inclusive,  
24 as though set forth fully.

25 **PRAYER FOR RELIEF**

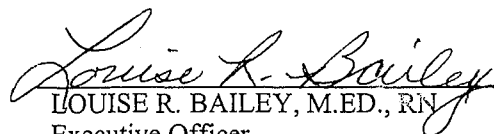
26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
27 and that following the hearing, the Board issue a decision:

- 28 1. Denying the application of Alison Rose Cruz for a Registered Nurse License;

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2. Taking such other and further action as deemed necessary and proper.

DATED: 7-12-11



LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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1 KAMALA D. HARRIS  
2 Attorney General of California  
3 KAREN B. CHAPPELLE  
4 Supervising Deputy Attorney General  
5 RANDY M. MAILMAN  
6 Deputy Attorney General  
7 State Bar No. 246134  
8 300 So. Spring Street, Suite 1702  
9 Los Angeles, CA 90013  
10 Telephone: (213) 897-2442  
11 Facsimile: (213) 897-2804  
12 *Attorneys for Complainant*

13 **BEFORE THE**  
14 **BOARD OF REGISTERED NURSING**  
15 **DEPARTMENT OF CONSUMER AFFAIRS**  
16 **STATE OF CALIFORNIA**

17 **AND**

18 **BEFORE THE**  
19 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
20 **DEPARTMENT OF CONSUMER AFFAIRS**  
21 **STATE OF CALIFORNIA**

22 In the Matter of the Accusation Against:

23 **ALISON ROSE CRUZ,**  
24 **20231 Falling Springs Road**  
25 **Walnut, CA 91789**  
26 **Vocational Nurse License No. VN 229163**

27 Respondent.

28 In the Matter of the Statement of Issues  
Against:

**ALISON ROSE CRUZ,**  
**20231 Falling Springs Road**  
**Walnut, CA 91789**  
**Applicant for Registered Nurse License**

Respondent.

Case No. VN-2009-1564

OAH No. 2011040730

Case No. [unassigned]

OAH No. [unassigned]

**MOTION TO CONSOLIDATE**

[Gov. Code. § 11507.3]



1 Given that both the BVN Accusation and BRN Statement of Issues arise out of the same  
2 conduct, consolidation of the matters will allow all parties to avoid unnecessary costs and delay  
3 by allowing evidence and testimony to be presented in a single proceeding. Moreover, judicial  
4 economy will be promoted by enabling the administrative law judge to hear all testimony and  
5 evidence in a single instance; thus avoiding two identical hearings which would ensue if the  
6 matters are not consolidated.

7 **III. CONCLUSION**

8 For the above reasons, the Complainants respectfully request that the two above captioned  
9 matters be set and consolidated for the same hearing date, but retain separate OAH case numbers  
10 due to two different client agencies.

11 Dated: \_\_\_\_\_

Respectfully Submitted,

12 KAMALA D. HARRIS  
13 Attorney General of California  
14 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General

15  
16 RANDY M. MAILMAN  
Deputy Attorney General  
17 *Attorneys for Complainant*

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